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COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

BRADLEY MILLIKEN,

Plaintiff and Appellant,

v.

COACHELLA VALLEY WATER DISTRICT
et al.,

Defendants and Respondents.

E029724

(Super.Ct.No. INC 017956)

OPINION

APPEAL from the Superior Court of Riverside County. Charles Everett Stafford, Jr., Judge. Affirmed.

Bradley Milliken, in pro. per., for Plaintiff and Appellant.

Redwine and Sherrill, Steven B. Abbott, Julianna K. Strong; Best Best & Krieger, Michelle Ouellette and Jeffrey S. Ballinger for Defendants and Respondents.

1. Introduction

Plaintiff appeals from an order denying his petition for a writ of mandate to set aside the actions of the Coachella Valley Water District (the district) in certifying an

environmental impact report (the EIR) and approving plans to expand its Water Reclamation Plant No. 7 (the plant).

The district proposes to increase the plant's wastewater collection, reclamation and disposal capacity from 2.5 to 5.0 million gallons per day (mgd), by upgrading the plant's existing facilities and by building two additional percolation ponds (the project). The purpose of the project is to provide additional plant treatment capacity for projected increases in sewage flows within the plant's service area through the year 2017, and to provide redundant plant capacity during maintenance activities.

The new ponds are to be built on a 105-acre parcel located north of the plant and on the upstream side of a United States Bureau of Reclamation flood control dike (the pond site). The ponds would occupy 37 acres of the 105-acre pond site. An underground pipeline would connect the plant to the new ponds.

Plaintiff's family owns a date farm and residence that are located north of the plant site and southeast of the pond site. The property also includes a well that is located downgradient from the pond site. A portion of the family's farmland is an agricultural preserve under the Williamson Act.¹

Plaintiff first contends that the EIR failed to adequately describe the project's environmental setting. Second, he contends that the EIR failed to describe the project's

¹ The California Land Conservation Act of 1965, commonly known as the Williamson Act (Gov. Code, § 51200 et seq.) restricts agricultural lands to agricultural uses through long-term contracts between landowners and local governments. The restricted lands are assessed for tax purposes according to their uses, not their development potential.

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true scope, and that the project is a segment of a larger project. Third, he contends that the EIR failed to analyze the project's potential impacts on water quality, particularly on groundwater drawn from plaintiff's well. Fourth, he contends that the EIR failed to adequately analyze alternatives to the project, and rejected each alternative solely because the project entailed lower costs. Fifth, he contends that the project is inconsistent with zoning and land use laws, and will therefore have significant impacts on land use.

We affirm and conclude that the EIR adequately described the project's environmental setting and scope, adequately analyzed the project's potential impacts on groundwater quality, adequately analyzed a reasonable range of project alternatives, and properly rejected each alternative. We also conclude that plaintiff has failed to show that the project is inconsistent with applicable zoning or land use laws.

2. Background

The existing plant was built in two phases. Its first phase, completed in 1980, consisted of a 1.0 mgd aerated lagoon treatment facility with on-site percolation pond disposal. In 1995, the district completed a 2.5 mgd extended aeration facility with tertiary and biosolids handling facilities. The plant site is located within the City of Indio and occupies approximately 80 acres.

Tertiary effluent is recycled wastewater that is used for irrigation purposes. The plant supplies tertiary effluent to nearby golf courses. When demand for tertiary effluent is

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low, the effluent is percolated (evaporated and/or discharged to groundwater) in the percolation ponds. Percolated effluent is treated, but not to tertiary standards.

The upgrades to the plant's existing facilities include a headworks,² an aeration basin³ and blower,⁴ two secondary clarifiers,⁵ and a pump to transport treated effluent to the new ponds. Effluent that cannot be sold for irrigation purposes, nor percolated at the plant's existing ponds, would be pumped to the new ponds.

3. Discussion

A. Standard of Review

We review an agency's decision certifying an EIR to determine "whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."⁶ Substantial evidence "means enough relevant information and

² A headworks is the primary treatment facility, where effluent passes over large screens and through grinders to remove large solids and equalize flow through the facilities.

³ An aeration basin is where air is added to primary effluent to begin the biological degradation process.

⁴ Blowers provide air to the aeration basins to mix the basins' contents and supply oxygen for biological degradation.

⁵ A secondary clarifier is a settling area where liquids and solids are further separated after primary treatment and some biological degradation.

⁶ Public Resources Code section 21168.5. All further statutory references will be to the Public Resources Code unless otherwise indicated.

reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁷

“In applying the substantial evidence standard, ‘the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.’ [Citation.]”⁸ The reviewing court also “reviews the administrative record independently; the trial court’s conclusions are not binding on it.”⁹ “Nevertheless, the EIR is presumed adequate, and plaintiff bears the burden of proving otherwise.”¹⁰ Plaintiff must identify how the EIR’s failure to include more detailed information misled the agency or the public, omitted or understated any problem, or was prejudicial in any way.¹¹

B. The Environmental Setting

Plaintiff contends that the EIR did not adequately describe the environmental setting in the vicinity of the project. We disagree.

⁷ Section 15384, subdivision (b) of the Guidelines for the Implementation of the California Environmental Quality Act. (Cal. Code Regs., tit. 14, § 15000 et seq. (hereafter Guidelines)).

⁸ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights*).

⁹ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1375-1376.

¹⁰ *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 523.

¹¹ *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 749.

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published. . . . The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”¹²

“Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project”¹³

Plaintiff maintains that the EIR “completely expunged” any reference to his property, although his “ranch properties and home will be completely surrounded by the proposed plant expansion to the south . . . and the proposed ponds to the north.” He maintains that “there is insufficient data in the EIR for any reader to determine that the proposed percolation ponds would be located approximately 250 feet upwind from [his] house.”

Plaintiff’s argument is without basis, and disregards information in the EIR. The EIR describes all land uses in the vicinity of the plant. A map, at figure 2.6-1, shows that the existing plant is almost completely surrounded by agricultural land, and that the pond site is located to the northeast of agricultural land. The EIR also states that “crops grown in the immediate area include watermelon, tomato, corn, and dates. The agricultural land located between the treatment plant and the dike [plaintiff’s land] is mapped as prime farmland. [¶] .

¹² Guidelines, section 15125, subdivision (a).

¹³ Guidelines, section 15125, subdivision (c).

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.. [¶] . . . [T]he nearest residence is located approximately 950 feet north of the centerline of Avenue 38 just across from the treatment plant.”

The EIR also contains detailed information concerning the area’s climate and wind conditions. The prevailing winds in the Coachella Valley are from the northeast, and the predominant wind speed is between four and 12 miles per hour. At times, large-scale weather patterns produce high winds. Thus, the EIR very specifically described plaintiff’s farmland, the exact location of his residence in relation to the plant and pond site, and the wind conditions in the vicinity of the project.

Plaintiff also maintains that “[i]t can be only vaguely implied, and presumably not realized by reviewing agencies, that the pipelines to convey the sewage to those ponds will have to cross [his] properties.” This argument is also without basis, and ignores information in the EIR.

The EIR, at figure 1-2, shows the exact locations of two alternative alignments of the single pipeline that would connect the plant to the new percolation ponds. The EIR states that “the longer of the two proposed alternative alignments (Figure 1-2) for the effluent pipeline to the new percolation ponds involves crossing privately owned parcels now in agricultural use located between the plant site and the flood control dike. The length of easement over private property is 1,040 feet.” Thus, the EIR expressly acknowledges that one alternative pipeline alignment would cross plaintiff’s property.

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Plaintiff further maintains that “[t]he EIR goes on to imply that [his] property has been removed from Agricultural Preserve status protected by the [Williamson Act] when in fact only a portion of adjacent properties have been so removed.” This argument also misconstrues the EIR.

The EIR states that “most of the land in Section 33^[14] between the southern boundary of the section and the flood control dike is in agricultural preserve, protected by the California Land Conservation Act (Williamson Act) of 1965. . . . The owners enter into a Land Conservation Contract with the County of Riverside for 10 years, renewable. [*Sic.*] Either party may file a notice of non-renewal that limits the contract to 10 years. A notice of non-renewal has been filed for the *western property in the Section 33 agricultural area*, so the contract ends January 1, 2000.”¹⁵ Thus, the EIR expressly acknowledges, just as plaintiff maintains, that some but not all of plaintiff’s property has been removed from agricultural reserve status.

Lastly, plaintiff asserts that the environment in the plant’s vicinity is “degraded” because the plant’s existing ponds are “inoperable,” and that the EIR has “categorically excluded” evidence of groundwater contamination in the vicinity of the project. Plaintiff points to no evidence to support either assertion.

¹⁴ Section 33 refers to a block of agricultural land in figure 2.6-1. Plaintiff’s farmland lies within section 33.

¹⁵ Italics added.

Accordingly, we conclude that the EIR adequately described the environmental conditions in the vicinity of the project.

Plaintiff's reliance on *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*¹⁶ and *Galante Vineyards v. Monterey Peninsula Water Management Dist.*¹⁷ is misplaced. In *San Joaquin Raptor*, the EIR was misleading because it depicted the environmental setting as agricultural, but failed to mention a nearby wildlife preserve, or whether wetlands existed on the project site.¹⁸ In *Galante Vineyards*, the EIR was inadequate because it barely mentioned viticulture or wineries in the area of the project site, notwithstanding that the preparers of the EIR had been advised of the importance of viticulture in the area.¹⁹ Here, in contrast, there is no evidence that the EIR either fails to describe or understates the significance of any land uses or other environmental conditions in the vicinity of the project.

C. The Project's Description or Scope

Plaintiff contends that the EIR does not disclose the project's true scope, and that the plant's "ultimate intended capacity" is 20.0 mgd, not 5.0 mgd as the EIR states.

¹⁶ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 (*San Joaquin Raptor*).

¹⁷ *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109 (*Galante Vineyards*).

¹⁸ *San Joaquin Raptor*, *supra*, 27 Cal.App.4th at pages 723-726.

¹⁹ *Galante Vineyards*, *supra*, 60 Cal.App.4th at page 1122.

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Accordingly, plaintiff argues that the project is a segment of a larger project,²⁰ and that the EIR's analyses of the project's impacts are understated.

The district contends that any expansion of the plant's capacity above 5.0 mgd is not reasonably foreseeable; therefore, the EIR was not required to analyze the effects of possible future plant expansions. We agree with the district.

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."²¹ An EIR must include "an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project."²²

The EIR describes the project as "the expansion of [the plant] from 2.5 to 5.0 mgd" The project's first objective is "[t]o provide adequate wastewater treatment capacity . . . for the entire ID 58 service area through the year 2017."

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²⁰ See section 21093 (tiering of environmental impact reports), and Guidelines, sections 15152 (tiering), 15165 (multiple and phased projects), 15167 (staged EIR), and 15168 (program EIR).

²¹ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²² *Laurel Heights, supra*, 47 Cal.3d at page 396; see also *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 735.

Plaintiff argues that the EIR has “deliberately understated” projected increases in population (and associated sewage flows) within the plant’s service area, “in an attempt to conceal the ultimate intended capacity of [the plant] at 20 mgd” Plaintiff points to no evidence to support his argument. Plaintiff also misinterprets the EIR and evidence in the administrative record.

The EIR estimates that the population within the plant’s service area will increase from 29,240 in 2000, to 52,240 in 2015 and to 61,285 in 2020.²³ These estimates are based on census tract figures prepared by the Coachella Valley Association of Governments (CVAG), and estimates of the overlap between areas represented in the census tract figures, and the plant’s service area.

Contrary to plaintiff’s assertion, the census tract figures correspond directly to the EIR’s analysis, and plaintiff does not contend that the EIR’s overlap estimates are inaccurate or unreasonable. Thus, plaintiff has not demonstrated that the EIR’s estimates of population increases within the plant’s service area are inaccurate or understated.

The EIR assumes that each individual in the plant’s service area will generate approximately 100 gallons of wastewater per day. Thus, based on the census tract figures, sewage flows (influent) to the plant would be approximately 5.2 mgd in 2015, and 6.1 mgd in 2020. But the EIR projects that the maximum influent to the plant will be only 4.95 mgd in 2017.

²³ The plant’s service area, known as improvement district 58 or “ID 58,” includes the communities of Myoma, Bermuda Dunes and Thousand Palms, and portions of the cities of Indio, La Quinta, Palm Desert, Rancho Mirage, and Cathedral City.

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The EIR explains that “[t]he District’s projections are slightly lower than CVAG’s, but can be considered in general agreement based on the level of accuracy involved in subdividing census tracts.” The EIR also explains that the project would be inconsistent with area-wide planning, and would have significant growth-inducing impacts, if the project accommodated more population than projected. Thus, the EIR concluded that “the 5.0 mgd plant should accommodate population growth until 2017.” Plaintiff does not question the EIR’s reasoning or conclusion.

Plaintiff also notes that the new headworks will be built to accommodate 8.5 mgd, and that this is further evidence that the plant’s “ultimate intended capacity” is 20.0 mgd. Plaintiff’s argument misconstrues the import of the 8.5 mgd headworks, and ignores the evidence in the record that the plant’s overall operating capacity will remain at 5.0 mgd.

The EIR explains that “certain specific process units will be sized for 8.5 mgd (i.e., headworks) to take advantage of economies of scale, but the overall operating capacity of the plant will be limited by other units sized for 5.0 mgd. Future expansions will be constructed when necessitated by population growth in the area; this is not anticipated to be required until approximately 2017. Environmental documentation will be completed for any future projects at the time they are actually proposed, so that conditions existing and potential impacts at that time can be accurately described.”

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Thus, the 8.5 mgd headworks will not necessarily lead to or facilitate a 20.0 mgd plant in the foreseeable future.²⁴ There is no evidence that the population of the district's service area will require 20.0 mgd of wastewater treatment capacity, either through 2017 or in later years.

Plaintiff further argues that a 1993 interoffice district memorandum shows that the project's true scope is 20.0 mgd. This memorandum stated that "most of the *ultimate 20 mgd flow of effluent* cannot be percolated on the existing site,"²⁵ and made a reference to percolating *10.0 mgd of effluent* in ponds north of the flood control dike.²⁶

Plaintiff is reading the 1993 memorandum out of context. Other evidence in the administrative record shows that the 1993 memorandum was referring to "the original conception of the off-site percolation ponds." A 1997 interoffice district memorandum specifically referred to the 1993 memorandum, and stated: "It is now time to review the previous assumptions in light of current information and to give more detail to the scope of the project." Thus, the 1993 memorandum does not represent or describe the true scope of the project.

²⁴ Plaintiff also notes that the draft EIR stated that the headworks "will be sized for 10.0 mgd with ability to expand in future phases." The final EIR corrected this apparent typographical error to 5.0 mgd.

²⁵ Italics added.

²⁶ Italics added.

Plaintiff also argues that the average daily influent to the plant increased by 222 percent between 1994 and 1999 (from .40 mgd to 1.45 mgd), and that this means that the project's true scope is 20.0 mgd. Plaintiff reasons that if the 222 percent growth rate is projected through 2020, the actual capacity of the plant would then be 24.24 mgd. Plaintiff's argument ignores CVAG's population projections through 2015 and 2020, and the district's estimates of maximum influent to the plant that are based on CVAG's projections. There is no evidence that the 222 percent growth rate between 1994 and 1999 will continue in any future five-year period.

Accordingly, plaintiff has failed to demonstrate that the EIR understates the true scope of the project, or that expansion of the plant's treatment capacity above 5.0 mgd, is a reasonably foreseeable consequence of the project.

D. Water Quality Impacts

Plaintiff contends that the EIR does not adequately analyze the possibility that the project will contaminate groundwater in the vicinity of the plant, including water drawn from the well on plaintiff's property. The district contends that the EIR adequately addressed these impacts, and that substantial evidence supports the EIR's conclusion that the project would have no significant impacts on groundwater quality. We agree with the district.

“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes

account of environmental consequences.”²⁷ “The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.”²⁸

“[T]he level of analysis provided in an EIR is subject to the rule of reason. The level of specificity for a given EIR depends upon the type of project. The analysis must be specific enough to permit informed decision making and public participation. The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. What is required is the production of information sufficient to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned.”²⁹

The EIR concludes that “[a]lthough [the plant] would treat an additional 2.5 mgd of sewage flows generated in ID 58, a greater proportion of the effluent would be reclaimed than percolated. Effluent quality will be the same as at present and no negative impact on groundwater quality has been identified from existing percolation and recycling practices. . . The effect of effluent on the quality of underlying groundwater will remain less than significant.”

²⁷ Guidelines, section 15151.

²⁸ Guidelines, section 15146.

²⁹ State Office of Planning and Research discussion following Guidelines, section 15146.

The EIR discusses test results taken from a monitoring well (MW-1) located on the north side of the plant and upgradient from the plant's existing percolation ponds. The depths of MW-1's perforations are not known. Test results from MW-1 taken in 1952, 1953, 1966, (before the plant was built in 1980) and in 1993 show that the quality of MW-1's water has slightly improved over this 41-year period. Total dissolved solids (TDS) and nitrate concentrations in MW-1 have been low, and have slightly declined during this period. MW-1's water is not suitable for drinking, however.

The EIR also discusses an irrigation well (H1) located south and downgradient of the plant's existing ponds. The EIR notes that H1's water quality is "substantially higher" than MW-1's, and that "[t]wo conditions might account for the higher quality. The plant site is located at the mapped edge of the Thousand Palms Subarea, which has a sharp boundary with the adjacent Indio Subarea. Thus, [H1] might be drilled in the Indio subarea aquifer, which has water of different and superior quality. TDS and nitrates in [H1] are also quite low, and indicate no effect from percolated effluent."

The EIR notes that plaintiff's well (Q1) is located approximately 185 feet north (upgradient) of the plant's existing ponds, and within 500 feet of the proposed ponds. Q1 was drilled as an irrigation well, but was recertified as potable in 1999. No evidence of effluent contamination has been detected in Q1. The driller's log for Q1 shows that its perforations begin at 240 feet below ground surface (bgs), and that there are thick clay layers from 21 to 140 feet bgs and from 206 to 250 feet bgs. The EIR concludes that the depth of Q1's perforations and the thick clay layers above its perforations "most likely" explain why effluent from the plant's existing ponds has not affected Q1's water.

The EIR briefly discusses two additional wells (M1 and N1). M1 and N1 are located west-northwest of the existing ponds, and west-southwest of the proposed ponds. M1 and N1 are farther from both the existing ponds and proposed ponds than Q1. The EIR concludes that “[b]ecause of elevation differences and distance, percolated effluent would not affect these wells.”

The EIR also contains detailed topographical information concerning the plant and proposed pond site. The plant site slopes “gently” to the southeast. The proposed pond site slopes to the south, with elevations ranging from 80 to 60 feet above mean sea level (at the toe of the dike).

Accordingly, we conclude that the EIR adequately analyzed the project’s impacts on groundwater in the vicinity of the plant, and that substantial evidence supports its conclusions.

Plaintiff maintains that the EIR is inadequate because it does not include evidence of past groundwater contamination at the plant in the form of “biological profiles” or “presence/absence tests.” There is no evidence to support this contention.

The EIR notes that the plant currently operates under California Regional Water Quality Control Board Order No. 94-044. The order mandates that the plant’s effluent “shall not cause degradation of any water supply.” The order requires that groundwater (water from MW-1) be monitored for nitrate, coliform and TDS, on a quarterly basis, because water from MW-1 is used as both an eye wash and an emergency shower.

The results of these quarterly tests are not reported in the EIR, nor are they part of the administrative record. The results are a matter of public record, however, and plaintiff

has not presented the results to substantiate his allegation of groundwater contamination. Thus, plaintiff has not shown that the EIR's failure to include the quarterly test results from MW-1 has misled the district or the public, has omitted or understated any problem, or has been prejudicial in any way.³⁰

Plaintiff also maintains that the district intends to use the plant as a recharge site in exchange for access to Colorado River water, and that the "[f]ailure to include these Water Agreement documents in the Administrative Record renders the EIR incomplete and patently deceptive." Plaintiff may not challenge the EIR on this ground, because the issue was not raised at the administrative level.³¹

Plaintiff also misconstrues the district's statement, made in its opposition papers filed in the trial court, that the "[l]ow permeability layers [in the soil surrounding plaintiff's well] retard downward water movement through the ground. . . . Due to these low permeability layers, the predominant direction of water flow is horizontal and not vertical. Plaintiff argues that the district is representing that no amount of effluent percolated at the ponds will return to groundwaters, and that this is inconsistent with the EIR's acknowledgment that "effluent is currently discharged to percolation/evaporation ponds or applied as irrigation water, a portion of which returns to groundwaters"

³⁰ *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*, *supra*, 18 Cal.App.4th at page 749.

³¹ Section 21177, subdivisions (a) and (b). See also *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 997.

Nothing in the district's argument is inconsistent with the EIR. The district is not representing that no amount of percolated effluent will return to groundwaters, only that percolated effluent is unlikely to contaminate plaintiff's well, due to the depth of the well's perforations and the thick clay layers in the soil. Indeed, the EIR acknowledges that "[t]he ponds . . . would contribute to incidental groundwater storage."

Finally, plaintiff maintains that the EIR is internally inconsistent because it states that "[p]ercolation of effluent will not affect potable wells since [the wells] are upgradient of the ponds[,]" but acknowledges that plaintiff's well is downgradient from the proposed ponds. Plaintiff misquotes the EIR, because the full sentence reads, "[p]ercolation of effluent will not affect potable wells since [the wells] are upgradient of the ponds *and/or completed in deep aquifers not affected by effluent percolation.*"³² Thus, there is no inconsistency.

E. Project Alternatives

Plaintiff contends that the EIR failed to adequately analyze alternatives to the project, and that "[n]o substantial analysis was presented to justify [the EIR's selection of the project], only that it appears to be the lowest cost alternative." We conclude that the EIR adequately analyzed a reasonable range of alternatives, and that substantial evidence supports the EIR's rejection of each alternative.

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the

³² Italics added.

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project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”³³ “The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.”³⁴

“[T]he public agency bears the burden of affirmatively demonstrating that, notwithstanding a project’s impact on the environment, the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.”³⁵ “[I]f alternatives are rejected, an EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages or cannot be accomplished.”³⁶ “While some conclusions may require an extended analysis to justify them, others are so simple they are almost self-explanatory.”³⁷

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³³ Guidelines, section 15126.6, subdivision (a); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.

³⁴ Guidelines, section 15126.6, subdivision (d); see also *Foundation for San Francisco’s Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 910.

³⁵ *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134; see also *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at page 566.

³⁶ *San Joaquin Raptor*, *supra*, 27 Cal.App.4th at page 737.

³⁷ *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1754.

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“‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”³⁸ “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.”³⁹

The EIR considered seven alternatives to the project, and explained why each was rejected. The EIR rejected the first alternative (no project), because it did not meet the project’s objective of providing adequate wastewater treatment capacity for the plant’s service area through the year 2017. Additionally, “[t]reatment of flows in excess of 2.5 mgd could result in discharge of inadequately treated water in violation of existing permits.”

The EIR rejected the second alternative (routing influent to another treatment or expanding another plant) for several reasons. Routing influent to the nearest alternative plant, WRP-4, would require expanding the district’s pumping station and possibly the pipeline. Moreover, the plant site is close to recycled water users (golf courses and turf farms). Flow directed to WRP-4 would be “wasted” rather than recycled, because WRP-4

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³⁸ Guidelines, section 15364; see also Guidelines, section 15126.6(f)(1) (listing factors that may be considered in addressing feasibility of project alternatives).

currently discharges effluent to the Salton Sea. Expanding another plant would not be feasible because the project is partly intended to meet backup requirements at the existing plant.

The EIR rejected the third alternative (building less or more additional plant capacity), because building less capacity would not meet the project's objective of providing adequate treatment capacity within the plant's service area through 2017. Building more capacity would be in excess of population projections, and the plant's immediate backup and disposal needs.

The EIR rejected the fourth alternative (finding an alternative location for the pond site), because the proposed pond site is on district property, and as close to the plant site as possible. Other nearby land is in agricultural use and/or not for sale.

Under the fifth alternative, all effluent in excess of 2.5 mgd would be percolated, rather than recycled. This alternative would save tertiary treatment expansion costs and cost of delivering tertiary effluent to recycled water users, but was rejected because it would result in poor water resource management in a desert area, and is contrary to district and state water policy. It would also require more percolation capacity than the plant can provide, either on its existing ponds or on the new pond site.

Under the sixth alternative, a storage tank would be built to handle excess effluent when demand for recycled water is low. This alternative would make more effluent

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³⁹ *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181. See also *Foundation for San Francisco's Architectural Heritage v. City and*

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available for reuse, but was rejected because the storage tank would have to be at least 30 feet deep and occupy 10 acres to hold over 100 million gallons. The plant site could not accommodate it, and building it offsite would potentially impact sensitive species, cultural resources, and agricultural lands in the district's service area.

Under the seventh alternative, all effluent that cannot be recycled would be discharged to the Whitewater River, and no new percolation ponds would be built. It would require building approximately one mile of pipeline from the plant to the Whitewater River/Coachella Valley Stormwater Channel. The discharge would occur when demand for recycled water is low.

The EIR acknowledges that the seventh alternative has both advantages and disadvantages, compared to the project. It would increase flow to and dilute the Salton Sea by a minor amount, and it could create aquatic and riparian habitat in the channel. But it could also create mosquito habitat, increase channel erosion, and require more maintenance in the channel. It also involves acquiring permits under the Clean Water Act for discharging water into the channel, an encroachment permit from the railroad for the pipeline, and possibly additional permits.

The EIR further acknowledges that the seventh alternative may have less adverse effects on groundwater quality, but that the project's impacts on groundwater quality are less than significant. Additionally, the discharged water "as an irrigation resource" or incidental groundwater storage, would be "wasted" under the seventh alternative. Thus, the

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County of San Francisco, supra, 106 Cal.App.3d at pages 913-914.

EIR concluded that the seventh alternative offered no greater environmental benefits over the project.

Thus, the EIR considered a reasonable range of alternatives, and substantial evidence supports its rejection of each alternative, for environmental or technological reasons. Contrary to plaintiff's contention, no alternative was rejected solely on the basis of cost, or because the project "appear[ed] to be the lowest cost alternative." Therefore, the district is not required to show that the cost of any alternative made the alternative impractical or infeasible.

F. Land Use Issues

Plaintiff contends that the project will have significant impacts on land uses, because it is inconsistent with Riverside County's and the City of Indio's zoning ordinances, and the Riverside County Comprehensive General Plan, specifically the Western Coachella Valley Plan. We disagree.

Under Riverside County's zoning ordinance, the plant and pond site are zoned W-2 (controlled development area), under Riverside Land Use Ordinance No. 348.3888 (the county ordinance). The county ordinance, section 15.1, describes "uses permitted in W-2 zone." Section 15.1, subdivision (b)(2), permits "[w]ater works facilities, both public and private, intended primarily for the production and distribution of water for irrigation purposes" if the gross area of the lot is at least one acre. Section 15.1, subdivision (e)(1), permits public utility uses, including, "[s]tructures and installations necessary to the conservation and development of water such as dams, pipe lines, water conduits, tanks, reservoirs, wells and the necessary pumping and water production facilities."

Plaintiff argues that the project is neither “[intended] primarily for the production [and distribution] of water for irrigation purposes” under subdivision (b)(1), nor “necessary to the conservation and development of water” under subdivision (e)(1). He argues that the purpose of the project is wastewater disposal, not irrigation or conservation.

Plaintiff’s construction of the permitted uses within W-2 zones is unduly narrow. The project would expand the plant’s capacity to produce and distribute recycled water for irrigation and conservation. Additionally, effluent disposal during periods of low demand for recycled water is a necessary part of recycling water for irrigation and conservation. Thus, the project is consistent with Riverside County’s zoning ordinance.

Plaintiff also argues that the project is inconsistent with the City of Indio’s zoning ordinance. The City of Indio Ordinance No. 1155 (city ordinance), section 159.361(K) permits “public utility structures” within any “P” district. But plaintiff maintains that the new percolation ponds are not “structures” because they are not buildings, and that the district is not a “public utility,” but a community services district.

Although the plant site is located in a “P” district, the pond site lies outside the city’s boundaries in unincorporated Riverside County. But even if the pond site is subject to the city ordinance, plaintiff’s argument is again unduly narrow. The percolation ponds are “structures,” and the district is a “public utility” within the ordinary meaning of the terms. Moreover, section 159.360 of the city ordinance provides that “[t]he P designation provides for a variety of public . . . facilities which support the community and are operated by governmental agencies” Plaintiff also argues that the plant site is an “industrial use” of the land which is prohibited in a P district under section 159.363(C)(3). This

argument also ignores the scope of the P designation under section 159.360, and the plain meaning of the term “public utility structure.”

Plaintiff correctly notes that a public utility structure requires a public use permit, under section 159.453, and that the project must meet “maximum development intensities” and “general development standards” under sections 159.364 and 159.365. These are “[d]etermined on a case by case basis based on the compatibility of the proposed use with existing or proposed uses surrounding the site.” Again, assuming that the percolation ponds are subject to the city’s ordinance, plaintiff has not shown that the project cannot meet the city’s standards.

Thus, plaintiff has failed to show that the project is inconsistent with the city’s ordinance.

Plaintiff also maintains that the project is inconsistent with the Western Coachella Valley Plan (the WCVP), section II.5(d), (e) and (g). Section II.5(d), provides: “Open Space . . . shall be preserved and maintained.” Section II.5(e) provides that “[r]ivers and floodways, lakes and reservoirs, as designated as water resources on the allocation map, are limited to open space and limited recreational land uses.” And section II.5(g) provides that “[t]he utilization of natural resources including soils, water, vegetation, air, wildlife, and mineral resources shall be carefully controlled and managed.”

Plaintiff argues that the project is inconsistent with subdivision (d) because percolation ponds do not preserve and maintain open space. He argues that the project is inconsistent with subdivision (e) because the pond site would be located in a floodway, which must be limited to open space, not a “sewage disposal field.” And he argues that the

project is inconsistent with subdivision (g) because “a sewage disposal field” is incompatible with managing natural resources.

Plaintiff disregards section I.5(a) of the WCVF, which provides that “[p]ublic . . . service [] facilities, may be found consistent with all the land use designations of the Western Coachella Valley Plan under the following: [¶] (1) The facility will not create a significant land use compatibility problem. [¶] (2) The site has adequate and available circulation, water distribution, sewage collection and utility service. [¶] (3) The location of the proposed use will not jeopardize public health, safety and welfare [or] [t]he facility is necessary to ensure the continual public safety and welfare. (Flood control, water and sewer service, roads, etc.)”

As described in the EIR, the project is a public service facility that will not create a significant land use compatibility problem, will not jeopardize the public health, safety and welfare, and may be necessary to ensure the public safety and welfare. Thus, the project is consistent with the WCVF.

Lastly, plaintiff contends that the district “would likely not obtain [the] necessary approvals” for the project, “since they offer no evidence that this was done at any point in the Plant’s history.” This contention has no bearing on the adequacy of the EIR as an information document. Therefore, we do not consider it.

4. Disposition

The order denying the petition for writ of mandate is affirmed. The district shall recover its costs on appeal.

NOT TO BE PUBLISHED

s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/McKinster
J.